

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT STEVEN WOODS,

Defendant-Appellant.

UNPUBLISHED

August 4, 2005

No. 253225

Kent Circuit Court

LC No. 02-009925-FC

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, and sentenced to a prison term of eleven to twenty-five years. He appeals as of right. We affirm.

Defendant argues that a new trial is required because the trial court's jury instruction regarding accomplice testimony was inadequate, inasmuch as it did not sufficiently explain that the law gives an accomplice "a different status of analysis than that of a non-accomplice witness," did not explain the benefit that the accomplice received for her testimony (a significant reduction in her sentence), and failed to point out the differences between her testimony in defendant's trial and that in her own trial. Because defendant did not preserve this issue by objecting to the trial court's jury instruction, we review this issue for plain error in accordance with *People v Carines*, 460 Mich 750, 761, 764-767; 597 NW2d 130 (1999). See also *People v Young*, 472 Mich 130; 693 NW2d 801 (2005).

The trial court's jury instruction was not clearly or obviously deficient and, therefore, defendant has not shown a plain error. *Carines, supra*. Moreover, defendant has not established that he was prejudiced. Although the standard jury instruction regarding accomplice testimony, CJI2d 5.6, is stronger in terms of advising the jury to exercise caution when considering the testimony of an accomplice, and provides more detail with respect to the considerations for evaluating accomplice testimony, in this case the accomplice's motivation to incriminate defendant was thoroughly highlighted by defense counsel in his opening statement, cross-examination, and closing argument. Any deficiency in the trial court's instruction did not affect the outcome of the trial. Therefore, defendant has not shown prejudice and is not entitled to relief.

Defendant also argues that the trial court denied him his constitutional right to due process, specifically the right to present a defense, when it refused his request for an adjournment to secure the attendance of a witness. This issue is also unpreserved. The transcript does not show that

defense counsel requested an adjournment, or that counsel asserted defendant's constitutional right to due process or to present a defense. This Court reviews unpreserved constitutional issues for plain error pursuant to *Carines, supra*.

We conclude that defendant has not shown that the alleged error was prejudicial, i.e., that it affected the outcome of the proceedings. The only information available concerning the proposed witness' testimony is his three-page statement to the police. The statement refers to a letter from the accomplice to the witness requesting the witness to tell defendant that if he does not send her money, she would implicate him in the charged robbery. But the statement also indicates that the contents of the letter caused the witness to question defendant's claim of innocence. Moreover, the witness' statement indicates that defendant "never told him that he saw anything" and that he was inside a home during the incident, which is contrary to what defendant told the police. The existing record does not demonstrate that the proposed witness' testimony would have affected the outcome of the trial.

Affirmed.

/s/ Stephen L. Borrello
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly